

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION FIELD OPERATIONS TRAINING MANUAL

Volume - II: Compliance

Chapter 6: Special Procedures for Compliance Reviews

- Par. 1. Mandatory Enforcement Violations**
2. Procedures for Unsatisfactory Rated Passenger and Placarded HM Carriers
3. Terminal Compliance Reviews, Shipper Terminal Compliance Reviews, and Compliance Reviews of Household Good Agents
4. Streamlined Compliance Reviews

Illustration 6-1: Mandatory Enforcement Violations

1. MANDATORY ENFORCEMENT VIOLATIONS

- a. Enforcement action must be taken whenever certain safety violations (e.g. using a driver who tested positive for a controlled substance, false medical certificates, etc.) are discovered, and can be documented.
- b. These specific violations are listed in Illustration 6 - 1. When one of these violations is discovered and can be documented, an enforcement report must be prepared under certain circumstances (see Illustration 6 - 1). If enforcement action is not taken on one of these discovered violations, an explanation must be included in Part C of the CR report.

2. PROCEDURES FOR UNSATISFACTORY PASSENGER AND PLACARDED HAZARDOUS MATERIAL CARRIERS

- a. When the laptop CR software shows that a motor carrier that operates commercial motor vehicles designed to transport passengers in interstate commerce or a motor carrier of placarded hazardous materials has a proposed safety rating of unsatisfactory, the investigator must supply the motor carrier with a notice of proposed safety rating and a detailed listing of recommendations. These recommendations should be tailored to the motor carrier's specific compliance problems. The standard recommendations used in the laptop CR software can be used as a starting point with more detailed and specific recommendations added by the investigator. The recommendations should identify at least the minimum areas needing

improvement and state that it is only intended as a tool to assist the motor carrier in improving its safety rating. Contact the highest ranking motor carrier official (sole proprietor, partner, or corporate officer level) and show him/her the notice of proposed safety rating and explain the compliance plan. Request this official to sign or initial, and date all pages of the notice and recommendations. Keep signed copies of all documents. The proposed safety rating will become the motor carrier's final safety rating 45 days after the date the notice of proposed safety rating is received by the motor carrier.

Note: Consideration for and initiation of enforcement action will proceed independently of these procedures.

- b. *Safety Rating Petitions Under 385.17* - Before or after a proposed safety rating becoming final, a motor carrier may request a change to a proposed or final safety rating based on evidence that corrective actions have been taken. The request must be made in writing to the Field Administrator and must include a written description of corrective actions taken and supporting documentation. The final determination on the request will be based upon the submitted documentation and any information obtained from additional investigation if necessary. The filing of a request for change to a proposed rating does not stay the 45-day period after which a proposed safety rating becomes final. If the motor carrier has submitted evidence that corrective actions have been taken and a final determination cannot be made within the 45-day period, the period may be extended for up to 10 additional days at the discretion of the Field Administrator. If it is determined that the motor carrier has taken the necessary corrective actions, the motor carrier must be provided with written notification that the proposed safety rating will not be assigned or, if already assigned, rescinded. If it is determined that the motor carrier has not taken all of the necessary corrective actions, the motor carrier must be provided with written notification that its request has been denied and that the proposed safety rating will become final. Any motor carrier whose request for a safety rating change is denied may petition for administrative review of a proposed or final safety rating within 45 days of the denial of the request. If the proposed safety rating became final, it will remain in effect during the period of administrative review unless stayed by the reviewing official.
- c. *Safety Rating Petitions Under 385.15* - Within the 45 days prior to when the proposed safety rating becomes final, or within 45 days after the denial of a request for a safety rating change, a motor carrier may petition for an administrative review of a proposed or final safety rating by submitting a written request to the Director, Office of Enforcement and Compliance. The

petition must state why the proposed safety rating is believed to be in error and list all factual and procedural issues in dispute. The petition may be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition. The Director, Office of Enforcement and Compliance may request the petitioner to submit additional data and attend a meeting to discuss the safety rating. Failure to provide the information requested or attend the meeting may result in dismissal of the petition. A petitioning motor carrier that operates commercial motor vehicles designed to transport passengers, or a petitioning motor carrier of placarded hazardous materials must be notified in writing of the decision on administrative review within 30 days after receipt of the petition. If the decision on the administrative review results in a final safety rating of unsatisfactory, the written notification must be accompanied by an appropriate out-of-service order.

- d. A motor carrier with a final safety rating of unsatisfactory is prohibited from operating a commercial motor vehicle to transport passengers or placarded hazardous materials. When conducting a follow-up review on a carrier subject to the 45-day prohibition on the transportation of HM or passengers, investigators shall not issue the carrier a new proposed unsatisfactory safety rating. If the review indicates that the carrier has not improved, an Order must be issued that is effective on day 46 after the initial proposed rating was issued. The only exception would be if the Agency extends the period by the 10 days allowed under the regulations. Then the Order would be effective 56 days from the date FMCSA issued the original proposed unsatisfactory rating. If the carrier's compliance has not improved the following statement must appear on the recommendation page:

“This compliance review has determined that your company's rating remains unsatisfactory, and your company remains subject to an out-of-service order pursuant to the findings of the compliance review conducted on (date).”

3. *TERMINAL COMPLIANCE REVIEWS, SHIPPER TERMINAL COMPLIANCE REVIEWS, AND COMPLIANCE REVIEWS OF HOUSEHOLD GOODS AGENTS*

- a. Terminal, Branch, or Division Reviews
 - (1) CRs shall not be conducted at locations other than the principal place of business without approval of the State Director whose territory contains the motor carrier's/shipper's principal place of business and the State Director whose territory contains the location where the CR will be conducted.

- (2) For CRs completed at locations other than the principal place of business, complete the address tab and identification tab of Part A of the laptop CR software as if the CR was conducted at the motor carrier's principal place of business. **All other entered information must be based on the specific terminal operation (e.g. number of drivers, equipment, etc.).** Records selection will be based on number of drivers and vehicles operating out of that terminal. CRs that are performed on a portion (terminal, branch, etc.) of a motor carrier operation are not uploaded into MCMIS.
- (3) Investigators must exercise care when citing a motor carrier for a recordkeeping violation during a CR of a portion (terminal, branch, etc.) of the entire operation. Before any recordkeeping violations are cited, ensure that the records are not being maintained elsewhere.

b. Shipper Terminal Reviews

- (1) Generally shipper reviews should be conducted at the location from where hazardous materials are being shipped. The State Director of the state that is responsible for the shipper's principal place of business should be notified of any activity.
- (2) For CRs completed at locations other than the principal place of business, complete the address tab and identification tab of Part A of the laptop CR software as if the CR was conducted at the motor carrier's principal place of business. Check "terminal" in the address tab under location of review, **All other entered information must be based on the specific terminal operation (e.g. hazardous materials shipped)** The terminal location should be included in the Part C comments to the compliance review. CRs that are performed on a portion (terminal, branch, etc.) of a motor carrier operation are not uploaded into MCMIS. **A hard copy of the review must be forwarded to Headquarters for input.** Reviews should be sent to the Office of Information Systems (MC-RIS).
- (3) Investigators must exercise care when citing a motor carrier for a recordkeeping violation during a CR of a portion (terminal, branch, etc.) of the entire operation. Before any recordkeeping violations are cited, ensure that the records are not being maintained elsewhere.

- (4) If an enforcement case is prepared, an enforcement case number will be issued from the investigating division office. The enforcement case is then prepared and the claim issued from the investigating office. The case is processed by the service center that normally processes that division's enforcement cases.
- (5) The State Director of the division office whose territory contains the shippers principal place of business must be notified upon issuance of the claim and at the conclusion of the enforcement action.

c. Household Goods Carrier's Agent Reviews

- (1) Many motor carriers of household goods utilize agents for performing transportation services. These agents may or may not be motor carriers who hold their own operating authority. A CR performed on an agent which does not possess its own operating authority, and is not operating as an exempt for-hire carrier, is considered to be a terminal review, and only **one** CR report shall be prepared. This report shall show the USDOT number, name, and principal place of business of the authorized for-hire motor carrier. The agent's name and address shall be entered in Part C of the CR report.
- (2) When reviewing an agent which also conducts its own motor carrier operations - two CR reports shall be prepared if a CR is performed on each of the two operations. One report shall show the motor carrier operating as an agent, and the other report shall show the carrier operating on its own authority.

4. OPTIONAL STREAMLINED COMPLIANCE REVIEW PROCEDURES

If the motor carrier has had a CR in the previous 24 months, the investigator with approval from the State Director has the option of conducting a streamlined CR in lieu of a full CR. A streamlined CR may be conducted during an enforcement follow-up. A streamlined CR involves the following:

- a. Review of accidents for the previous 12 months;
- b. Review of all parts of the regulations wherein enforcement action was taken as the result of the previous CR;
- c. Review of Parts 382 and 383, including CDLIS checks, consistent with guidelines set forth in Chapter 2 of this Volume.

- d. Review of any part of the regulations in which a violation of an acute regulation, or a 10% or greater frequency of violations of a critical regulation, was cited on the previous CR;
- e. Review of any part of the regulations when the motor carrier's profile, SEA values, or other relevant information indicates a lack of management control being exercised by the motor carrier.
- f. Recalculation of out-of-service rate if three or more level 1, 2, or 5 vehicle inspections were conducted within the previous 12 months and they were conducted after the most recent CR. Refer to Chapter 2 for guidance on how to calculate the out-of-service rate. Refer to Chapter 2 for guidance in the case of fewer than three vehicle inspections being conducted within the previous 12 months or after the most recent CR.